IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 16820 of 2006(B)

PETITIONER:

P.V. USMAN, S/O. MUHAMMED,
PRESS VALAPIL, TELLICHERRY MUNICIPAL LIMIT,
P.O. TEMPLE GATE, TELLICHERRY-2.

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.
SMT.SANJANA R.NAIR

RESPONDENTS:

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1. STATE OF KERALA,
LAW DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE SUB INSPECTOR OF POLICE,
THALASSERY POLICE STATION, THALASSERY.

3. THE SUB INSPECTOR OF POLICE,
PALLUR POLICE STATION, MAHE.

4. THE SUPERINTENDENT OF POLICE, MAHE.

5. THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION, NEW DELHI.

6. AFTHARI,
`NAFEES', NEAR THAZHE CHOKLI JUMA MASJID,
P.O. CHOKLI, EAST PALLOOR.

7. ASIF, -DO-.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
SRI.M.SASINDRAN
R1 TO 4 BY GOVT. PLEADER SRI. GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE POST MORTEM CERTIFICATE ISSUED FROM THE ACADEMY OF MEDICAL SCIENCES, PARIYARAM DT.7.1.06.

EXT.P2 TRUE COPY OF THE DEATH CERTIFICATE ISSUED BY THE TELLICHERRY MUNICIPALITY DT.11.1.2006.

EXT.P3 TRUE COPY OF COMPLAINT DT. 9.1.06 ADDRESSED TO SUPERINTENDENT OF POLICE, MAHE.

EXT.P4 TRUE COPY OF REPORT FILED BY THE PONDICHERRY POLICE TO THE SUB DIVISIONAL MAGISTRATE, MAHE.

/TRUE COPY/

R. BASANT, J.

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W.P.C.No. 16820 of 2006 B

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Dated this the 14th day of March, 2007

JUDGMENT

The petitioner is the unfortunate father of a young girl aged 19 years, who allegedly committed suicide while she was working as a maid servant in the house of respondents 6 and 7. The house of respondents 6 and 7 is situated not within the State of Kerala, but outside it, in the State of Pondicherry, i.e. within Mahe. The deceased was found with burn injuries in a shed within the residential compound of respondents 6 and 7 on 5.1.2006. She was removed to the District hospital at Tellicherry and death ensued at that hospital later. Intimation was given from the hospital and a crime under Section 309 I.P.C. was registered even before the death of the deceased. The Pallur police conducted investigation after registering the crime.

2. In the course of the investigation, the Pallur police initially submitted a report before the learned J.F.C.M. Mahe, before whom the F.I.R. was lodged. The investigation allegedly did not reveal any offence and report was filed before the learned Magistrate to delete

the allegation under Section 309 I.P.C. and to reckon the F.I.R. as one registered under Section 174 Cr.P.C. The learned J.F.C.M.-I obviously accepted the said report and forwarded the records to the Sub Divisional Magistrate for continuation of the proceedings under Section 174 Cr.P.C.

3. After completing the investigation/enquiry, the report was submitted to the Sub Divisional Magistrate, Mahe to apprise the Sub Divisional Magistrate that it was a case of suicidal death. On receipt of that information, the petitioner has come to this Court complaining about the inadequate investigation conducted by the Pallaur police in respect of the crime registered. It is prayed that the 5th respondent may be directed to continue the investigation.

4. Respondents 1 and 2 are the State of Kerala and the S.I. of Police, Tellicherry police station, within the jurisdiction of which death of the deceased had taken place. Respondents 3 and 4 are the Sub Inspector of police, Pallaur police station and Superintendent of Police, Mahe. The investigation was conducted by the third respondent within the jurisdiction of the 4th respondent. Powers under Article 226 of the Constitution are sought to be invoked for issue of a direction to the 5th respondent to take over investigation.

5. Objection are raised on the question of jurisdiction as well as on merits. It is contended that this Court has no jurisdiction to issue any direction in relation to an investigation conducted after making a report to the learned Judicial First Class Magistrate having jurisdiction and later to the Executive Magistrate having jurisdiction. On the question of jurisdiction to investigate, there can be no doubt that both the officials at Mahe and the officials at Tellicherry have jurisdiction to conduct the investigation in as much as the burn injuries were suffered within the jurisdiction of Mahe police and consequent death had taken place within the jurisdiction of Tellicherry police station. Therefore, going by the mandate of Section 179 Cr.P.C., the courts at both places have jurisdiction to consider the matter. The investigation can certainly be conducted by the police at Mahe.

6. The Judicial First Class Magistrate as well as the Sub Divisional Magistrate at Mahe are already ceased of the matter. The report was made to the Judicial First Class Magistrate at Mahe that no offence has been committed and that the matter has to be sent to the Sub Divisional Magistrate at Mahe. Subsequent report under Section 174 Cr.P.C. has also been submitted to the S.D.M., Mahe.

7. The question is whether in the light of Article 226(2) of the Constitution this Court can issue direction to the 5th respondent to take over the investigation. The question, according to me, is concluded by the decision of the Full Bench in **Meenakshi Sathish** v. **Southern Pertochemical Industries** (2007 (1) KLT 890 (FB). The said decision is authority for the proposition that conduct/action of the courts which are amenable to the jurisdiction under Articles 226 and 227 of the Constitution and Section 482 Cr.P.C. within the jurisdiction of other High Courts are not amenable to the writ jurisdiction of this Court. In the instant case the J.F.C.M. Mahe had considered the question and has passed an order forwarding the records to the Sub Divisional Magistrate. Mahe under Section 174 Cr.P.C. Obviously, therefore, the Magistrate had applied his mind on the investigation conducted and had come to the conclusion that the matter deserves to be dealt with under Section 174 Cr.P.C. by the Sub Divisional Magistrate. SemanticS apart, what is virtually challenged, nay the cause of action, is the acceptance of that report by the Judicial Magistrate and forwarding of the records to the Sub Divisional Magistrate. I am not satisfied at all that this court will be justified in exercising the jurisdiction in the facts and circumstances of this case.

8. In as much as I have come to the conclusion that jurisdiction does not vest in this Court under Article 226 or 227 of the Constitution or Section 482 Cr.P.C., it is not necessary for me to go into the merits of the case in detail. Suffice it to say that my attention has been drawn to the case diary produced by the learned Prosecutor in connection with the investigation of this crime, in which there is a statement of the deceased recorded by the Investigating Officer in the presence of the doctor, who was treating the patient, in which the deceased had confirmed that hers was a case of suicide. I have been taken through the said statement also in detail.

9. This Writ Petition is accordingly dismissed. The petitioner's right to move the appropriate court having jurisdiction will remain unfettered by the dismissal of this writ petition.

(R. BASANT)
Judge

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